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## **European Union**

### **Sanitary/Phytosanitary/Food Safety**

# **Denmark Allowed to Maintain National Limits on Nitrates and Nitrites 2003**

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#### **Report Highlights:**

**Denmark may legally maintain national limits in food for nitrates and nitrites that are stricter than the EU harmonized levels, following a Court of Justice ruling. The Court considered that a Member State may ask to maintain existing national provisions and derogate from a harmonization measure when it considers that the risk to public health is greater than found by the Community legislature at the time the harmonization measure was adopted.**

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Includes PSD changes: No  
Includes Trade Matrix: No  
Unscheduled Report  
Brussels USEU [BE2], E2

The Council framework directive of 1988 on food additives provides that in order to be included in the list of authorized food additives, they must not present any risk to health. If there is any doubt as to the risk to health, the Scientific Committee for food (SCF) must be consulted. Directive 95/2/EC established the list of authorized "miscellaneous" additives (i.e. other than sweeteners and colors). Denmark had voted against this directive at the time of its adoption, on the ground that it did not meet health requirements as regards in particular nitrites, nitrates and sulphites.

Nitrites and nitrates have a preservative effect and are used in meats. They inhibit the growth of bacterial pathogens such as *Clostridium botulinum*, which is responsible for botulism. However, in meat products, nitrites are transformed into nitrosamines which are recognized as carcinogenic.

Sulphites are preservatives used in foods such as wine, jam, pastries and dried fruit. Ingested in large amounts, they can cause lesions in the digestive tract and provoke severe allergic reactions in asthmatics.

Denmark requested to maintain its national provisions concerning these additives. In 1999, the Commission decided not to authorize the national provisions, which were considered disproportionate in relation to the objective of protecting public health. Denmark then requested the Court of Justice to annul that decision.

The Court considered that a Member State may ask to maintain derogating national provisions which already exist on the basis of an assessment of the risk to public health different from that accepted by the Community legislature at the time it adopted the harmonization measure. The Member State must prove that the derogating national provisions ensure a level of health protection which is higher than the Community harmonization measure and that they do not go beyond what is necessary to attain that objective.

In its consideration of the Community measures for sulphites, the Court took the view that these addressed the concerns voiced in 1994 SCF opinion, by requiring that the use of sulphites be limited and that consumers are warned of their presence through labeling. The Court thus supported the Commission's decision not to authorize the stricter Danish levels.

As regards nitrites and nitrates, the Court concluded that the Commission decision did not take sufficient account of the 1995 opinion of the SCF, which called into question the maximum amounts of nitrates set under directive 95/2/EC. It therefore ruled that the Commission's decision to overrule the Danish national measures is unlawful and must be annulled.

The full text of the Court Judgement is available from the website  
<http://curia.eu.int/en/content/juris/index.htm> - look for case number C-3/00

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